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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,656	05/30/2000	Ivo Raaijmakers	ASMEX.137C1	2013

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EXAMINER

LEO, LEONARD R

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/584,656

Applicant(s)

RAAIJMAKERS, IVO

Examiner

Leonard R. Leo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 53-59, 65, 67-69 and 71-76 is/are pending in the application.
- 4a) Of the above claim(s) 56-58 and 67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53-55, 59, 65, 68, 69 and 71-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The amendment filed April 26, 2002 has been entered. Claim 70 is cancelled, claims 53-59, 65, 67-69 and 71-76 are pending, and claims 56-58 and 67 remain withdrawn.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 53-55, 59, 65, 68-69 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Bahng. The recitation of “for high temperature treatment of substrates” is considered to be a statement of intended use, even if claimed, does not merit patentable weight unless the body of the claim refers back to, is defined by, or otherwise draws life and breadth from such intended use. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The functional recitation of “allowing treatment of the substrate upon the support structure” has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Claims 65, 68-69 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes (column 4, lines 25-28).

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Claims 65, 68-69 and 71 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kroeker (Figure 7, column 7, lines 13-22).

In this rejection of claims 65, 68-69 and 71 above, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this instance, the recitation of "configured to support a substrate in a process chamber during high temperature processing" is similar to "adapted to." Furthermore, the recitation is functional and does not limit the subcombination of a "cooling mechanism."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 72-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmine et al in view of Bahng.

Ohmine et al discloses all the claimed limitations except a heat exchange member.

Bahng discloses a heat exchanger comprising a processing chamber 14; a substrate support/movable member 74; and a heat exchange member 18 for the purpose of actively cooling the substrate.

Since Ohmine et al and Bahng are both from the same field of endeavor and/or analogous art, the purpose disclosed by Bahng would have been recognized in the pertinent art of Ohmine et al.

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Ohmine et al a heat exchange member for the purpose of actively cooling the substrate as recognized by Bahng.

***Response to Arguments***

The rejection under 35 USC 112, first paragraph is withdrawn.

The presence of a generic claim does not negate a species requirement nor does it “distinctly and specifically point out the supposed errors in the restriction requirement.” (See page 2 of Office action mailed March 13, 2002 and page 3 of Office action mailed June 15, 2001) The election filed July 9, 2001 does not state an election “with” or “without traverse”, nor any arguments as required above. The election is treated an election without traverse.

Applicants’ remarks with respect to claims 53, 65 and 72 are noted. However, applicants have not responded to the Examiner’s position of “intended use” and “functional” recitations with respect to Bahng, nor the functional recitation of “configured to” in claim 65. Applicants have either overlooked this position or ignored it. In either case, it appears applicants have acquiesced in this position for lack of any arguments.

Although, the rejections in view of Bahng, Hughes and Kroeker are anticipatory, a brief explanation is believed necessary. Bahng (Figures 2 and 8) discloses a chamber 16, a substrate support 74, a heat exchange member 36, a movable element 68 and drive mechanism 70 to position the substrate 88 relative to the heat exchange member a gap of 0.254 – 0.762 mm (column 6, lines 38-44). Hughes discloses a chamber 1, a substrate support 11, a heat exchange member (2, 3), an unlabelled movable element and drive mechanism (i.e. dashed lines) to position the substrate 10 relative to the heat exchange member a gap of at least 1.27 mm (column

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4, lines 25-28). Kroeker (Figure 7) discloses a chamber 102 having a top wall 103, a substrate support 120, a heat exchange member 142, a movable element 158 and drive mechanism 156 to position the substrate 162, 166 relative to the heat exchange member a gap of at least 0.508 mm (column 7, lines 16-17).

With respect to the obviousness rejection, the combination of Ohmine et al and Bahng teach one of ordinary skill in the art to employ in Ohmine et al a heat exchange member for the purpose of actively cooling the substrate. Applicants do not dispute this position. Applicants have misconstrued the statement regarding the relevance and pertinence of the two references with the motivation to combine, as set forth above.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

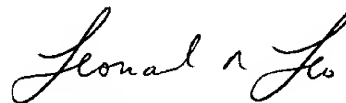
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be

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directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648.

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.



LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3743

July 28, 2002